IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3062 OF 2001

IN

SUIT NO.73 OF 2000

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Shree Swami Hathiramji Mutt ...Plaintiff

v/s.

Kamlesh Kumar & Anr. ...Defendants

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Mr.Rohit Kapadia i/b B.H. Prasad Sarma for the Plaintiff.

Mr.D.R. Zaiwala i/b Ms.Geeta Shastri for the Defendants.

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CORAM: D.K.DESHMUKH, J.

DATED: 2nd September,2004

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff is Shree Swami Hathiramji Mutt at Tirupati. It claims to be the owner of the properties which are described at Exh.A to the plaint, in the State of Maharashtra. The properties

in the State of Maharashtra are known generally as Shree Ranchhodji Temple at Bhuleshwar. It appears that there are also temples at Nasik and Panvel and there are vast properties including agricultural lands. According to the Plaintiff, the Defendants Nos. 1 & 2 are claiming these properties as their own illegally. According to the Plaintiff, the suit properties which are described in Exh.A are owned by the Plaintiff. The Plaintiff is basing its claim of ownership on a judgment of the subordinate Judge at Chittur in the State of Andhra Pradesh dated 3-9-1970 that suit was filed by the Plaintiff against the Defendant Bavaji Raghavardanjee Varu, through whom the Defendants claim their title. In that suit, according to the Plaintiff, a clear finding has been recorded that the suit properties are owned by the Plaintiff and that the Defendants in that suit (herein after referred to as Bavaji) was appointed as Mahanth of the temple in Bombay and that the temple in Bombay is liable to submits accounts to the Plaintiff, though the surplus amount from Bombay is not liable to be transferred to the Plaintiff at Tirupati. According to the Plaintiff this judgment was challenged in appeal by the said Bavaji. Appeal was dismissed by the Appellate Court and the second appeal filed against both the orders has also been

dismissed. According to the Plaintiff, Defendant No.2 is claiming to be the owner of the property because of Will executed by Bavaji, who expired in the year 1976. In that Will the said Bavaji claims to be the owner of the properties at Exh.A and he appointed Defendant No.2 as his successors and Defendant No.1 as executor of the Will. According to the Plaintiff, the Defendants are not entitled to manage the properties. They are not owners of the properties. The Plaintiff, therefore, in the suit is seeking a decree of possession in relation to the properties at Exh.A against the Defendants.

2. By this Notice of Motion the principal prayer that is made by the Plaintiff is for appointment of the Receiver on the properties, as according to the Plaintiff, the Defendants are rank trespasser. Defendant No.2 has filed a reply and he is opposing the grant of reliefs claimed by this Notice of Motion. Defendant No.2 claims to have become owners of the properties because of the Will of Bavaji. He also claims title by adverse possession. According to Defendant No.2, because of the delay involved in filing this suit, interim relief should not be granted in favour of the Plaintiff.

3. I have heard the learned Counsel for both sides at length. So far as the title to the property of the Plaintiff is concerned, in my opinion, the issue is concluded by the judgment of the court at Chittur. In my opinion, what is said in paragraph 131 of that judgment is relevant. Paragraph 131 reads as under-

> 131. For all these reasons I hold on issue (1) that the Hathiramji Mutt is the owner of Ranchhodji temples and its branches and their properties in the State of Bombay and that it is not open to the Defendant to urge to the contrary, in view of Ex.B-1 agreement and no in view of Ex.A-1. I hold on issue (2) that Ex.A-1 to A-3 letters were signed by the Defendant voluntarily though Exs.A-1 and A-2 were typed written even before the Defendant met Narayanadoss and though they were presented to him for his signature as fait accompli. I further hold that they were so presented to him even without prior consultation as is clear from the fact that Ex.A-3 was conceived of by Narayanadoss as an after thought to enable him to draw the funds from the treasury in the name of the Defendant.

Thus I agreed that the contention of the Defendant that Ex.A-1 to A-3 were brought into existence under undue influence, I hold on issue (3) that the Defendant is liable to render account to the Plaintiff. I hold on issue (4) that Ex.B.1 agreement created an independent Mahant for the Suit temples with a liability to render account to the Akhada Panchayat of which the Plaintiff is to the claimant and which is only a representative body of the Hathiramji Mutt. Ex.B-1 agreement is binding on both the Plaintiff and the Defendant. I hold on issue 96) that the Receiver was competent to file this Suit. I hold on issue (10) that the present Plaintiff is entitled to continue the Suit. I hold on issue (110 that it is not open to the Defendant to urge that this Suit for rendition of Account is not maintainable. I hold on issue (12) that it was not pointed out by the Defendant as to how this Suit is barred by the principle of res judicata.

It is clear from what has been quoted above, that there is a clear finding recorded by the Court that the Plaintiff is the owner of Ranchhodji temple, it branches and their properties in the State of Bombay. Therefore, title of the Plaintiff to the properties in Exh.A is absolutely clear.

4. It is clear from the judgment of the Appellate Court that the Appellate court has also considered this aspect of the matter and has come to the same conclusion. In my opinion, paragraph 45 from the judgment of the Appellate Court is relevant. It reads as under:

> 45.As has been observed by the learned Subordinate Judge, another object of this periodically submission of accounts is an acknowledgement of the Plaintiff's title over these temples and Mandirs. In this connection we have clinching material in the shape of Ex.B-18 a counter statement submitted by Prayagossji to the Board of Commissioner of Hinds Charitable and Religious Endowment on 28-8-1945. Para 10

of this report reads as follows.

> "The Bombay Mutt is being managed by an appointee of this Defendant (Plaintiff-Mutt) He has the status of mahant and once appointed he generally continues for life like other Mahants. He superintends and manages the Bombay institutions and its endowments. Though it is a branch Mutt, no remittances are received from Bombay.
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> This has been the practice and custom from the time of the Predecessors of this Defendant and this Defendant is following the established custom in this respect."

In the above paragraph a statement is quoted of Prayagdossji submitted to the Board of Commissioner of Hinds Charitable and Religious Endowment on 28-8-1945. This Prayagdossji was the Mahant of the Matt at Tirupati. There is an agreement on record, which was signed by Bavaji also. That agreement is dated 29th October, 1947. It is clear that in place of Mahant Prayagdossji, after his death Narayanadoss

was appointed as Mahant of the Plaintiff's Tirupati Matt. By the agreement to control the affairs of the Matt at Tirupati as also at Bombay, one Akhada Panchayat was constituted. Paragraph 4 of the agreement dated 29th October, 1947 reads as under:-

> Sree Bavaji Raghuvara Doss the virkta disciple of the deceased Mahanth shall be the Mahanth of Bombay mutt and all its moveable and immoveable properties and manage and administer the same exercising all rights and privileges subject to the control of the Akhada Panchayat one of whose members shall check the affairs of the said mutt annually and submit the report to the Akhada Panchayat.

It is clear from above quoted paragraph that Bavaji was appointed as Mahant of the Bombay Matt and his appointment was subject to the control by Akhada panchayat.

5. From what is narrated above, two things are clear (i) that the title to the suit property vests in the Plaintiff; (ii) appointment of Bavaji

through whom the Defendants are claiming was by Akhada Panchayat.

6. Defendants are claiming through the Will of Bavaji. Perusal of that Will shows that by the time he executed the Will the deceased Bavaji had come to believe that he has become owner of the property. In his Will, he claims that he has number of immoveable properties throughout Bombay Presidency, Bombay City, Nasik District, Panvel and in Colaba District. What he means by this, is the suit properties. The very foundation on which this Will is based is non-existent. Bavaji was never the owner of these properties. He was holding these properties only as a trustee appointed by Akhada Panchayat and owner of the properties was the Plaintiff. It is clear from the provisions of Section 10 of the Limitation Act that because the Defendants are claiming the properties through Bavaji, who can be best described as trustee, no period of limitation is prescribed by the Limitation Act for institution of the suit. Section 10 of the Limitation Act reads as under:-

Suits against trustees and their

representatives.- Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

7. Thus, there is no question of the Defendants becoming owners of the properties by adverse possession.

8. Therefore, taking overall view of the matter, and as I find that the Defendants are rank trespassers in relation to the suit properties, following order would meet the ends of justice.

O R D E R

(i) Notice of Motion is granted in terms of

prayer clause (c).

(ii) The Court Receiver shall first carry out inventory of all the properties of the trust. The Court Receiver shall find out what are the properties of the trust, who are in possession of those properties, the persons who are found in possession are claiming to be in possession on what right.

(iii) The Receiver shall appoint the Defendant No.2 as his agent for the purpose of management of the properties. As agent of the Receiver, the Defendant No.2 shall be entitled to receive the rent, if the properties are occupied by tenants. The Defendant No.2 shall also be entitled to collect the amount from the collection at the temple. If the Defendant No.2 is in possession of any of the properties of the trust, the Receiver shall appoint him as the agent of the Receiver in possession of those properties on usual terms and conditions, except the condition of royalty.

The Plaintiff shall communicate within a period of three weeks from today the name of the person who shall be appointed as an agent of the Receiver for

the purpose indicated below:

(iv) The person whose name is communicated by the Plaintiff as agent of the Receiver shall supervise the working of the Defendant No.2 , specially the collections at the temple. He shall also be entitled to carry out pooja at the temple in Bombay, but this will not prevent the Defendant No.2 from carrying out the pooja. In case there are other temples including the suit properties, the Receiver shall make arrangement for the purpose of pooja etc. at those temples in consultation with the nominee of the Plaintiff.

(v) The Receiver may also continue the existing arrangement, if it is satisfactorily working.

(vi) The Receiver after preparing inventory of the properties as directed above, shall submit a report to the court and seek suitable orders from the Court.

(vii) The Receiver shall supply a copy of the report to both parties.

(viii) Parties shall be entitled to seek suitable interim reliefs on the basis of the report of the Receiver.

(ix) Defendant No.2 as agent of the Receiver shall maintain accounts and shall submit them every quarter to the Receiver, with a copy to the Plaintiff.

(x) The amount that will be collected by the agent of the Receiver, apart from being accounted, shall also be deposited with the Receiver, who shall keep the amount invested in fixed deposit, after providing for the routine expenditure that may be necessary.

(xi) Interim order in terms of prayer clause (d) shall also operate until further orders of the Court.

At the request of the learned Counsel for the Defendants, Receiver is directed to take action pursuant to this order after a period of three weeks from today.

Court Receiver & parties to act on ordinary copy of the order duly authenticated by the Associate/ Personal Secretary of the Court as a true copy.

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